

**To:** Herbst, John[herbst.john@epa.gov]  
**Cc:** Anderson-Carnahan, Linda[Anderson-Carnahan.Linda@epa.gov]  
**From:** Marcy, Ken  
**Sent:** Sun 8/16/2015 10:01:52 PM  
**Subject:** RE: EPA Update Request - RTOC Standing Issues (August 2015)  
High Priority Projects List for Tribes (Review) - August 2015 Update.xlsx  
Update August 16.docx

JR – attached is my updated large projects chart – along with a Word update on other issues (transboundary (primarily from Teena), mining 201 training, and the Gold King incident. Linda – please the call on the Gold King update – it's fairly general and I will provide an update during the call – you and I are also meeting on Wednesday to discuss any developments.

JR – in the table – I've noted areas where updates from other project leads have been provided, I'm just not sure if you have received the updates or not (Donlin, Chuitna) – let me know if you didn't – I can cut and paste from what I have. Ken

**Ken Marcy | Regional Mining Coordinator, national priorities list coordinator**

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**From:** Herbst, John  
**Sent:** Monday, August 03, 2015 3:08 PM  
**To:** Chung, Angela; Cox, Michael; Davis, Michelle V.; Marcy, Ken; Thomas, Sally; Grandinetti, Cami; Young, Margo; Sheldrake, Beth  
**Cc:** Anderson-Carnahan, Linda; Thomas, Sally; Brown, Katherine  
**Subject:** EPA Update Request - RTOC Standing Issues (August 2015)

Hope you had a great weekend! The RTOC will hold their next conference call on August 20<sup>th</sup> from 1-3 pm (Pacific). In preparation for this call, can you please provide any updates that you may have on the RTOC Standing Issues listed below by Friday, August 14<sup>th</sup>?

Thanks!

JR

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### **RTOC Standing Issues – (July 2015 EPA Updates)**

#### **Pebble Mine/404c**

**(EPA Contact: Margo Young)**

**\*Didn't Have Updates for July 2015 (Email from Leah Brown on 7/13/15) \***

June 2015 Updates:

On May 28, 2015, the United States Court of Appeals for the Ninth Circuit affirmed the district court's dismissal of Pebble Limited Partnership's (PLP's) lawsuit challenging EPA's authority to initiate the section 404(c) process in the Bristol Bay Watershed. In an unpublished decision, the court explained that EPA's letter initiating the section 404(c) process failed to meet the two necessary conditions to be a final agency action subject to judicial review under the Administrative Procedure Act (APA).

Also on May 28, 2015 the Alaska District Court heard oral arguments on EPA's motion to dismiss one of the three lawsuits filed by the Pebble Limited Partnership against the EPA. The case involves allegations relating to the Federal Advisory Committee Act. A preliminary injunction is still in place preventing EPA from engaging in any activities related to the section 404(c) process. Following oral arguments, the Court took the case under advisement and on June 4, 2015, the court granted in part and denied in part EPA's motion to dismiss. EPA is currently reviewing the court's decision.

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#### **Fish Consumption Rate (FCR)/Human Health Water Quality Standards**

**(EPA contact: Angela Chung)**

**Alaska:** Alaska DEC is planning to host a public workshop to share information on fish

consumption and human health criteria development in October 2015. DEC also has formed a technical workgroup to provide input as the State moves forward with revising its human health water quality criteria. The technical workgroup will have its first meeting in August 2015.

**Idaho:** Two Idaho tribes are collecting FCR data using two techniques [Food Frequency Questionnaire (FFQ) & National Cancer Institute (NCI) method]. An EPA contract has developed reports on FCR suppression and heritage rates for four ID Tribes. Preliminary tribal FFQ FCR information was provided to IDEQ on May 13, 2015.

Final tribal survey results will be shared with IDEQ in the late summer/fall. IDEQ held a human health criteria rulemaking meeting on July 8 and presented preliminary results from its general population and recreational fish consumption surveys. IDEQ has scheduled another, final rulemaking meeting on August 6 to present their draft rule language, which will include a summary of their revised human health criteria calculations.

**Oregon:** In 2011, EPA approved Oregon's water quality standards, which were generally based on a FCR of 175 grams/day and a 10-6 cancer risk level.

**Washington:** Ecology announced their proposed rule to adopt human health criteria and revised implementation tools on January 12, 2015. The State's public comment period closed on March 23, 2015. EPA and other stakeholders submitted written comments to the State, which are posted on Ecology's website at: <http://www.ecy.wa.gov/programs/wq/ruledev/wac173201A/comments.html>. In addition, EPA has initiated a federal rulemaking process to propose updated human health water quality criteria for Washington if Ecology does not proceed with revising its state WQS. EPA plans to propose a federal rule later in the fall of 2015.

### **Climate Change**

**(EPA Contacts: Michael Cox and Michelle Davis)**

### **BIA Awards Almost \$7 million to Region 10 Tribes for Climate Change Projects**

The BIA's FY 2015 Tribal Cooperative Landscape Conservation Program awarded more than \$11 million to federally-recognized Tribes and Alaska Native Villages for climate

adaptation and coastal planning and related travel support for FY2015 proposals submitted by April 24, 2015. In Region 10, 43 Tribes, Native Villages, or Tribal Consortium were awarded almost \$7 million to support tribal work on climate adaptation in five areas:

1. Training and workshops to design and host opportunities to build skills and coordinate adaptation planning processes.
2. Climate change adaptation planning to assist in developing climate adaptation plans, vulnerability assessments, and data analysis.
3. Travel support for climate adaptation planning, training and cooperative efforts.
4. Development of ocean and coastal management plans for marine and coastal resources.
5. Travel support for ocean and coastal collaborative planning efforts.

### **Alaska Tribal Climate Webinar**

There will be an Alaska Tribal Climate webinar on August 25th, 10 am. Guests will be Hal Shepherd, President, Center for Water Advocacy and Charles Peele from Three Stars Alaska. Mr. Shepard will discuss how to plan for climate change impacts to water and Mr. Peele will discuss the Administration for Native American's Environmental Regulatory Enhancement grant program.

The Alaska Tribal climate webinars are a joint effort with the Institute for Tribal Environmental Professionals and present model tribal climate programs and potential funding sources. RTOC members are welcome, if interested in being included on the mailing list, please send an email to Michelle Davis. ([davis.michellev@epa.gov](mailto:davis.michellev@epa.gov)).

### **Resource Extraction/Transport**

**(EPA Contact: Teena Reichgott, Erik Peterson, & Ken Marcy)**

## Proposed Canadian Trans Mountain Pipeline Expansion

Project Description from the Canadian National Energy Board website:

The Trans Mountain Expansion Project (TMX) is a proposal to expand the existing Trans Mountain pipeline system between Edmonton, AB and Burnaby, BC. It would include approximately 987 km of new pipeline, new and modified facilities, such as pump stations and tanks, and the reactivation of 193 km of existing pipeline. The Westridge Marine Terminal would also be expanded.

New pipeline segments would be added between Edmonton and Hinton, AB, Hargreaves, BC and Darfield, BC and Black Pines, BC and Burnaby, BC.

Some existing, but currently deactivated pipeline segments between Hinton, AB and Hargreaves, BC and Darfield and Black Pines, BC would be reactivated.

## EPA Review and Comments

- Canadian National Energy Board-approved commenters' deadline to file comments is July 23, 2015. EPA plans on developing and submitting comments on this project.

June 2015 Updates:

- The **EPA High Priority Project List for Tribes** spreadsheet has been updated and provided for the June RTOC Quarterly Meeting.
- EPA has been meeting with Environment Canada, the Canadian Environmental Assessment Agency and British Columbia at the national and regional level to discuss our respective governments' environmental assessment processes and projects with the potential for transboundary impacts. EPA has stressed our trust responsibilities to tribes, as well as our government to government relationship. We have agreed to involve each other as early as possible in the review of projects with potential transboundary impacts and to communicate frequently.
- Port of Morrow Export Terminal: Federal permitting is on hold pending appeal process on Oregon Department of State Lands permit denial.
- Millennium Export Terminal: NEPA and SEPA draft EISs are expected winter 2016.
- Gateway Pacific Export Terminal: NEPA and SEPA draft EISs are scheduled for spring 2016.

- SSA Marine says it needs 90 days or more to respond to Lummi Nation's claims that a coal terminal would interfere with tribal fishing (Source: <http://www.bellinghamherald.com/news/local/article22313385.html>)
- Tongue River Railroad Company (TRCC): EPA R8, R10, and HQ are coordinating on a review of the Surface Transportation Board's draft EIS for TRCC to construct and operate a 42-mile rail line between Colstrip, Montana and the Ashland and Otter Creek areas of Montana. The public comment period has been extended for an additional 60 days and will now end on August 24, 2015. More information is available at <http://www.tonguerivereis.com>

### **GAP Guidance Implementation**

**(EPA Contact: Sally Thomas)**

**\* Updates for July 2015 Have Been Provided Above\***

June 2015 Updates:

- Jury is still out on effectiveness of Concurrent Review Process.
- Extension of GAP final Proposal Packages until May 29 (due to new process and new tools).
- PPGs deadline is later due to other grants timelines.
- FY15 Budget is \$10 million less than total of all requests (including Unmet Needs and 2-yr requests).

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### **Superfund Sites – Tribal Input Process**

**(EPA Contact: Beth Sheldrake (FMC OU) & Cami Grandinetti (Portland Harbor & NRRB)**

#### **FMC Operable Unit of the Eastern Michaud Flats Superfund Site**

**\*Didn't Have Updates for July 2015 (Email from Beth Sheldrake on 7/15/15) \***

June 2015 Update:

Cleanup work at the FMC site began for the season on March 16, 2015 and is expected to continue through December 2015. Grading work to create stable slopes is expected to be completed sometime this summer to be followed by capping of the contaminated material with clean soil and vegetation. EPA is working with the Shoshone-Bannock Tribes to address their concerns related to dust from the cleanup activities. Design of the groundwater extraction and treatment system is continuing and the system is scheduled to be constructed in 2016.

### **Portland Harbor Superfund Site (Portland, OR)**

EPA has been modifying the Feasibility Study submitted by the Lower Willamette Group and will release Section 3 of the FS on July 29 and Section 4 on August 7. With these releases, the complete FS, as modified by EPA will be out for review. During this time, EPA coordinates with all of the Tribes that have expressed interest in the site. The Tribes participate in the technical oversight group (with EPA and other stakeholders) regularly (last meeting was held on July 8, 2015).

In addition to these technical meetings, the Regional Administrator and National Program Director meet with the Tribes 2-3 times a year. The last meeting of these parties was held April 21, 2015 in Portland. The next meeting of this group will be on August 6, 2015.

In addition to this involvement, EPA follows the national and Regional policy on consultation with the Tribes which, (among other things) states that EPA must consult with the Tribes on any remedy decision. For Portland Harbor, the Region has committed to consulting with the Tribes prior to issuing the Proposed Plan, which is EPA's proposed cleanup of the site.

### **National Remedy Review Board**

See NRRB for NTOC revised.doc for detailed information (available upon request).

JR Herbst

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